IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.367 OF 1991

Vinay Asharam Rathi ...Appellant
Vs.
M/s. J.P. Mineral Corporation & Ors. ...Respondents

Shri Vinay Rathi-Appellant in Person.
Ms A.A. Agarwal and Shri N.B. Kamat for the Respondent Nos.1 to 3.

CORAM : A. S. OKA, J.

DATE : MARCH 13, 2006.

JUDGMENT:

1. Submissions of the Advocates appearing for the parties were heard in the last week and today the Appeal is kept for dictation of judgment. The Appellant is the Applicant in a claim for compensation filed under the Motor Vehicles Act, 1939. With a view to appreciate the submissions made by the Advocates appearing for the parties, it will be necessary to refer to facts of the case in brief.

2. On 28th September, 1979 at about 00.30 hrs. one Kirit Ratilal Dave was proceeding from Matunga towards Sion on a scooter. The present Appellant was a pillion rider on the scooter. At that time, a fiat car owned by the Respondent No.2 came in high speed from Rafi Ahmed Kidwai Road and entered the by-lane and dashed against the scooter. According to the case of the Appellant, the Respondent No.2 stopped his car, came out of the car alongwith his wife. He told the

by-passers that the would take his car in reverse direction and thereafter take injured persons to hospital by his car. However, the Respondent No.2 alongwith his wife fled away by sitting in the car. The Respondent No.2 did not report the accident to Police Station. The Appellant and other injured persons were taken to the hospital. The brother of the other injured person reported the accident to the Assistant Commissioner of Police, Matunga Police Station but the police did not take any action. The other injured person succumbed to the injuries sustained in the accident. The Appellant sustained injuries to the head and was admitted in Sion Hospital in Mumbai and was an indoor patient till 13th October, 1979.

3. A written statement was filed by the Respondent Nos.1 and 2. It was admitted that the car bearing No.MMY-1020 was validly insured with the Respondent No.3 herein on the date of the accident. However, they contended that the said car was not at all involved in the accident and infact, the car was not in Bombay on the date of the accident.

4. The Claim Application made by the Appellant as well as Claim Application made by the legal representatives of the other victim were disposed of by a common judgment and award. Both the Claim

Applications were dismissed as the Tribunal came to the conclusion that the claimants have failed to prove that the car owned by the Respondent No.2 was involved in the accident.

5. The Appellant appeared before me and stated that he has discharged his Advocate on record. He has argued the Appeal in-person. He invited my attention to various documents on record and the notes of evidence. He submitted that there was a gross negligence on part of the police authorities and hence, there was a gross delay in registering the First Information Report. He submitted that on plain reading of the oral evidence it is apparent that the case made out by the Respondent Nos.1 and 2 was false. He submitted that there was evidence on record to show that vehicle of the Respondent No.2 was involved in the accident and the accident has been caused due to rash and negligent driving on the part of the Respondent No.2. He pointed out the nature of injuries sustained by him and submitted that the Application ought to have been allowed.

6. Mrs Agarwal learned Advocate appearing for the Respondent Nos.1 to 3 pointed out that First Information Report was not registered for several months and present Appellant has not disclosed registration number of the car involved in the

accident to police. She pointed out that the Respondent Nos.1 and 2 have led evidence to show that on the date of the accident, the car was in Pune and the said evidence has been rightly accepted by the Tribunal. She pointed out that the Appellant has not suffered any major injury such as fracture. She submitted that Appeal deserves to be dismissed.

7. I have considered the rival submissions. The questions for my consideration are as follows:

(i) Whether the car bearing No.MMY-1020 was involved in the accident?

(ii) If answer to the question No.(i) is in the affirmative, whether the accident occurred due to rash and negligent driving on part of the Respondent No.2?

(iii) If both the aforesaid questions are in the affirmative, what should be amount of compensation?

8. The accident had taken place early in the morning on 29th September, 1997. However, First Information Report was registered on 17th April, 1980. The Appellant appearing in person made a grievance that there was negligence on the part of the police

authorities in recording the First Information Report. He pointed out that he had to make correspondence with the higher authorities and only thereafter, First Information Report was registered. In this connection, it will be necessary to refer to the deposition of witness No.4 examined by the Appellant. Witness No.4 is one Ramesh Bajirao Ghanvat. The said witness is a Sub-Inspector of Police attached to Traffic Control Branch. He has deposed that on 29th September, 1979 he was attached to Matunga Police Station. He has stated that he got information about the accident and he visited the spot of accident. He has stated that he found one scooter lying on the road and there was blood on the road. He stated that he shifted the injured to the hospital. He stated that a panchnama was drawn which is at Exhibit 27. He stated that after investigation, chargesheet was filed against the Respondent No.2. He stated that he visited the hospital in which both the victims of the accident were admitted before the drawing of panchnama. He stated that both of them were unconscious and one injured expired within three hours. He stated that he tried to record statement of the other injured person after he regained consciousness after few days, but at that time he was unable to remember anything. The statement of the present Appellant was thereafter recorded on 17th April, 1980 when he visited the concerned Police

Station. He has stated that he does not know whether the Appellant disclosed the vehicle number of the vehicle involved in the accident on 17th April, 1980. It must be stated here that in the typed copy of the deposition annexed to the Appeal paper-book the version of the witness is incorrectly typed to the effect that Appellant disclosed the vehicle number on 17th April, 1980. After the said witness was recalled for cross-examination at the instance of the Advocate appearing for the Respondents, the said witness stated as under:

. "One witness by name Deepak Mehta had given me the registration number of the vehicle before I had recorded the First Information Report in this case. That witness had given the registration number of the said vehicle as MHY 1020. Deepak Mehta had given only one registration number of the vehicle. I have not recorded the statement of the applicant. Vinay Asharam Rathi (Applicant in Application No.535 of 1980). Inspector Ranbir Lekha has recorded his statement during investigation."

He stated that the vehicle number of the vehicle involved int he accident was given to him on 17th April, 1980. He stated that the witness Deepak Mehta later on stated that there was a mistake in vehicle

number mentioned by him earlier and accordingly his supplementary statement was recorded. The reference here seems to be to error of mentioning as 'MHY' instead of 'MMY'.

9. Thus, the said Police Officer disclosed that the registration number of the vehicle was given to him by one Deepak Mehta who was a witness to the accident. In the cross-examination, the said witness denied the corrections of the suggestion that the Appellant had given the number of the vehicle orally in the third week November. While answering a court question, he stated that the delay in recording the First Information Report was that one injured person died on the same day and other injured person was unconscious for few days.

10. The facts which emerge from the evidence of the said Police Officer are that the the number of the vehicle involved in the accident was disclosed to the police on the date of registration of F.I.R. i.e. on 17th April, 1980 and one witness by the name Deepak Mehta had given the registration number of the vehicle involved in the accident to the said Officer.

11. The Appellant has produced a letter dated 15th March, 1980 send by him (Exhibit 38) to the Commissioner of Police in which he named the

Respondent No.2 and stated that car No.MMY-1020 driven and owned by the Respondent No.2 was involved in the accident. He made grievance in the said letter is that no steps have been taken by the Police to register the offence.

12. It is pertinent to note that the Respondent No.2 stepped into witness box. He stated that by the same car he proceed to Pune on 27th September, 1979 and returned to Mumbai on 02nd October, 1979. He stated that he was accompanied by his mother, brother and his wife. according to him his brother's marriage was to be performed in January 1980 and they had gone to Pune to the house of in-laws of his brother for making discussions regarding the marriage ceremony. He produced the receipt allegedly issued by M/s Rashid Petrol Pump Pune dated 27th September, 1979. He also produced the receipt dated 27th September, 1979 allegedly issued by Kiran Automobiles, Lonavala. He produced the receipt as according to him the receipt shows that at the said petrol pump at Lonavala he purchased 10 litres of petrol for his vehicle No.MMY-1020. The said two receipts were marked as article 'X' and 'X1' as the said receipts were not proved in accordance with law by examining proper witnesses. He relied upon a Bill dated 01st October, 1980 issued by a restaurant in Pune which is again marked as article 'X3'. He also produced a cash memo

of hotel New Taj, Khandala dated 02nd October, 1979. He also produced a cash memo issued by a shopkeeper from Lonavla on the same date. It must be noted here that none of these documents have been admitted in the evidence and same have been marked as articles. He stated in cross-examination that he left for Pune on 27th September, 1979 in the afternoon and for five days he stayed in Pune. In examination-in-chief he has stated that he alongwith other family members had been to the house of in-laws of his brother for finalising the discussion of marriage ceremony of his brother. It must be noted here that neither the in-laws nor family members of the in-laws of his brother have not been examined as witnesses. The Respondent No.2 relied upon two receipts for showing that petrol was filled-in in his car on 27th September, 1979 both at Lonavla and Pune. He produced a receipt dated 25th September, 1979 showing that 25 litres of petrol was filled-in in the same car in Mumbai. The said receipt is exhibited on record as Exhibit 30. The Respondent No.2 was cross-examined by pointing out that on Exhibit 30 in the date mentioned therein there is an overwriting. Figure '15' appears to have been converted into '25'. The cross-examination on this aspect is as under:

". I cannot read the figure '1' and '2' separately. (On perusal of the date in the

receipt it is clear that the figure '1' has been over written by the figure '2'. The receipt is taken on record and marked Exhibit 30)."

13. Perusal of Exhibit 30 shows that there is obvious overwriting in the date. The Respondent No.2 could not produce account book of the year 1979. A specific question was asked to the Respondent No.2 about the colour of the car involved in the accident. The same is recorded in the cross-examination which reads as under:

Qs. You had earlier stated that the car involved in the accident had dark green colour.

Ans. Yes.(I have read the evidence of the witness but the witness has never stated that the colour of the car involved in the accident was dark green)."

It must be noted here that P.W.4 Ramesh Ghanvat stated that witness Deepak Mehta had disclosed to him that the colour of the vehicle involved in the accident was green.

14. The brother of the Respondent No.2 was also examined who deposed that he alongwith the Respondent No.2, Respondent No's.2 wife and mother went to Pune

on 27th September, 1979 and returned to Mumbai on 02nd October, 1979. He also deposed that they had gone to Pune to settle his marriage. In the cross-examination he has stated as under:

". I alongwith my brother and his wife had gone in the car and moved in the car to Bombay. My brother and his wife may or may not have gone out at night in the end of September, 1979."

15. It is not the case of the Respondents that the Appellant had any animosity against the Respondent No.2 or his family members. According to the statement on oath made by the police officer, car number was also given by one witness to the accident. The Respondent No.2 produced documents which are merely marked as article 'X' to article 'X6' to show that on the date of the accident i.e. midnight of 28th September, 1979 and early morning of 29th September, 1979 the car was in Pune and his family members had gone to Pune on 27th September, 1979. However, the Respondent No.2 could not prove any of the said documents. None of the documents were admitted in evidence and were marked only as articles. The learned Single Judge of this Court in a decision reported in **1993 ACJ Page 1048 (M.S.R.T.C. Vs. Maggar Ghani Dhillon)** held that though strict rules of evidence are not applicable to a Tribunal, the

requirement of proof of document is not altogether dispensed with. In the present case, when the Respondent No.2 has taken up the stand that on the date of the accident he was in Pune, he should have proved the documents which are at article 'X' to 'X6'. The Respondent No.2 on 16th October, 1989 during the course of cross-examination, was called upon to produce account-books of the year 1979 as he himself stated that he maintains account-books. On that day, he did not disclose that account-books were not available. On the next date i.e. 18th November, 1986 the Respondent No.2 came out with the case that he was not in possession of the accounts-book on that day. He, however, produced a cash memo to prove that he purchased petrol in Mumbai on 25th September, 1979. Admittedly, there is an overwriting of the figures on the date mentioned on the said receipt. Adverse inference has to be drawn against the Respondent No.2 for non-production of his account-books. Even assuming that the documents marked as article 'X' to 'X6' are admissible in evidence, it is pertinent to note that none of the said documents relate to either 28th or 29th September, 1979. The Respondent No.2 has not examined any witness and in particular the in-laws of his brother to whom the Respondent No.2 and his family had visited Pune at the relevant time. Perusal of the evidence of the Respondent No.2 shows that it is not at all satisfactory and it does not inspire

confidence. Suffice it to say that the Respondent No.2 failed to establish that on 28th and 29th September, 1979 he had taken his vehicle to Pune. Therefore, the irresistible conclusion which has to be drawn is that the vehicle of the Respondent No.2 was involved in the accident. Therefore, the first question will have to be answered in favour of the Appellant.

16. In examination-in-chief the Appellant has stated that when alongwith deceased he was travelling from King Circle to Sion, the car of the Respondent No.2 which was having a green colour came from Rafi Ahmed Kidwai Marg from below the flyover bridge and knocked down the scooter. Thus, it was the car of the Respondent No.2 which entered the main road. As the case of the Respondent Nos.1 and 2 was of complete denial, there is neither any denial in the written statement to the allegations made against the Respondent No.2 about the rash and negligent driving nor any evidence is led to show that the scooter was being driven negligently. No suggestion has been given in the cross-examination of the Appellant to the effect that the accident occurred due to negligence on the part of the person plying the scooter. In absence of any such plea on part of the Respondent Nos.1 and 2 and on the basis of evidence of the Appellant and the other material on record, it will have to be held that

accident occurred due to rash and negligent driving of the vehicle on the part of the Respondent No.2. Hence, the second point will have to be answered in favour of the Appellant.

17. The Appellant has produced the hospital papers of the Sion Hospital, Mumbai at Exhibit 9. The said papers disclose that the Appellant was admitted as indoor patient from 27th September, 1979 to 02nd October, 1979. Casepapers record that the Appellant suffered from cerebral concussion. The casepapers also note that he suffered a C.L.W. on right frontal area of size of 1 1/2" X 1 1/2". The casepapers shows that the Appellant was given medication and was discharged on 13th October, 1979. He has also produced a document at Exhibit 10 which shows that the Appellant continued to be under treatment in the same hospital as an out patient.

18. The Appellant relied upon medical certificate issued by Dr. H.R. Jhunjhunwala dated 26th June, 1986 which records that the Appellant is suffering from partial permanent disability of 50%. Dr. Jhunjhunwala has been examined as a witness. Though Dr. Jhunjhunwala proved the certificate issued by him, in the cross-examination he stated that he had relied upon to the statement of the Appellant while issuing the certificate. Even reference to headache

and giddiness in the certificate was on the basis of the personal statement of the Appellant. He admitted that he never examined the Appellant before 26th June, 1986. Though he stated in his certificate that the Appellant lost two lower teeth, he admitted that in the papers of the Sion Hospital there is no reference to loss of teeth. He admitted that his assession of disability was partly based on the statements personally made by the Appellant. He admitted that nothing was mentioned in the casepapers of the Appellant regarding disability. After reading the cross-examination of Dr. Jhunjhunwala as it is, it is very difficult to accept the certificate issued by him as regards disability. The certificate is obviously issued only on the basis of personal statements made by the Appellant. Dr. Jhunjhunwala never had opportunity to examine the Appellant earlier to the date on which the certificate is issued. The papers of the Sion Hospital showing the treatment taken by the Appellant as out door patient do not show existence of any disability. Therefore, the theory of 50% permanent partial disability of the Appellant will have to be discarded. However, the fact remains that the Appellant suffered head injury and also suffered cerebral concussion and for sometime the Appellant was unconscious and had to be hospitalised for fifteen days.

19. The employer of the Appellant at the relevant time-Union Bank of India had issued certificate dated 06th March, 1984 which is at Exhibit 11. The said certificate discloses that the Appellant suffered loss of salary allowance to the extent of Rs.5,289/-. The casepapers on record show that apart from the hospitalisation for fifteen days, the Appellant was under treatment for considerably long time. He has stated that he has spend Rs.500/- on conveyance when he was taking treatment in out patient department in the hospital. He has stated that he has spent a sum of Rs.2,000/- for medication. It is true that the Appellant has not produced any vouchers. The Appellant was hospitalised for about fifteen days and thereafter, was under treatment as out patient for several days thereafter. It is not unreasonable to say that the Appellant must have spent a sum of Rs.2,000/- on medicines. Considering large number of visits made by the Appellant to the hospital for follow-up treatment, claim for Rs.500/- on account of conveyance charges also deserves to be granted. As Appellant was admitted in hospital for about fifteen days, some amount will have to be granted on account of travelling expenses to the relative of the Appellant and some amount by way of charges for special diet. In my view, sum of Rs.4,000/- deserves to be awarded on the aforesaid heads, namely, expenses on conveyance, the amount spent on medicines, and the

amount spent on special diet. As the Appellant suffered cerebral concussion and was hospitalised for fifteen days, general damages of Rs.5,000/- will have to be awarded to the Appellant. Thus, after considering loss of income and taking a round figure, the Appellant is entitled to compensation of Rs.15,000/-.

20. Considering the recent trend of judgments of the Apex Court, the rate of interest will have to be fixed at nine per cent per annum. Hence, I pass the following order:

: O R D E R :

(i) The impugned Judgment and Award is set aside.

(ii) The Respondent Nos.2 and 3 are jointly and severally directed to pay compensation of Rs.15,000/- to the Appellant with interest thereon at the rate of nine per cent per annum from the date of filing of the Claim Petition i.e. 22nd December, 1981 till the date payment of amount.

(iii) The Appellant will be entitled to proportionate costs from the Respondent Nos.2 and 3 throughout the proceedings.

(iv) The Respondent Nos.2 and 3 are granted time of three months to comply with this order.

(v) Appeal is partly allowed in above terms.

JUDGE